IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO. 498 OF 2004
IN
WRIT PETITION NO. 1941 OF 2004

Novartis Employees' Union — Appellant

vs.

Association of Chemical Workers
& ors. — Respondents

Mr. J. P. Cama, senior counsel with Ms.S. Kher i/b. M/s. Haresh Mehta & Co. for the appellant.

Mr.Benny Joseph i/b. M/s.Sanjay Udeshi & Co. for respondent no.2. .

CORAM : R.M. LODHA &
J. P. DEVADHAR,JJ.

Date : 12h August 2004

P.C.:

Heard Mr. J. P. Cama, the learned senior counsel for the appellant.

2. The application was made by the appellant before the Industrial Court praying therein that the appellant-union which is affiliated to Bharatiya Kamgar Karmachari Mahasangh (the Union) may be impleaded as a necessary party in place of the first respondent viz.

Association of Chemical Workers. The said prayer was based on the averment that the employees in the category of Medical Sales Representatives (MSRs) employed by by the employer company have been members of the appellant union and the appellant union is the sole union representing MSRs employed by the employer company. The application made by the appellant union was contested by the respondent no.1 Association of Chemical Workers union. The Industrial Tribunal by its order dated 16th June 2004 rejected the application of the appellant for their impleadment as party to the reference in place of the Association of Chemical Workers Union. The appellant filed writ petition before this Court challenging the order of the Industrial Tribunal dated 16th June 2004. The learned Single Judge dismissed the writ petition vide order dated 4th August 2004. Aggrieved thereby the present appeal has been preferred.

3. The learned senior counsel for the appellant relied upon the judgment of the Supreme Court in Hochtief Gammon v. Industrial Tribunal, Bhubaneshwar, AIR 1964 S.C. 1746 wherein the Supreme Court observed thus:

> "(12) Reverting then to the question as to the effect of the power which is implied in S. 18 (3)(b), it is clear that this power cannot be exercised by the

> Tribunal so as to enlarge materially the scope of the reference itself, because basically the jurisdiction of the Tribunal to deal with an industrial dispute is derived solely from the order of reference passed by the appropriate Government under S. 10(1). What the Tribunal can consider in addition to the disputes specified in the order of reference, are only matters incidental to the said disputes, and that naturally suggests certain obvious limitations on the implied power of the Tribunal to add parties to the reference before it, purporting to exercise its implied power under S. 18(3) (b). If it appears to the Tribunal that a party to the industrial dispute named in the order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of the employee, it may direct that other persons should be joined who would be necessary to represent such interest. If the employer named in a reference does not fully represent the interests of the employer as such, other persons who are interested in the undertaking of the employer may be joined. Similarly, if the unions specified in the reference do not represent all the employees of the undertaking, it may be open to the Tribunal to add such other unions as it may deem necessary. The test always must be is the addition of the party necessary to make adjudication itself effective and enforceable? In other words, the test may well be, would be non-joinder of the party make the arbitration proceedings ineffective and unenforceable? It is in the light of this test that the implied power of the Tribunal to add parties must be held to be limited."

4. In our considered view, in the nature of the prayer made by the appellant union for impleading them as necessary party to the reference in place of Association of Chemical Workers, the judgment of the Supreme Court cited by the learned senior counsel cannot be applied.

5. The learned senior counsel then sought to place reliance upon

Section 36 of the Industrial Disputes Act, 1947 which provides that the workman who is a party to the dispute shall be entitled to be represented in any proceedings by any member of the executive or other office bearer of a registered trade union of which he is a member. The learned senior counsel could not show any application made by the workman for their representation through the appellant union.

6. We are, therefore, not inclined to entertain the appeal. The appeal is dismissed in limine. However, it is clarified that in case the concerned workman makes any application to the Industrial Tribunal under Section 36(1) of the Industrial Disputes Act, 1947 for their representation by the registered trade union of which they are members, we observe that such application shall be decided by the Industrial tribunal in accordance with law uninfluenced by the impugned orders and this order.

7. In case such application is made by the concerned workman within two weeks from today, the industrial Tribunal shall decide that application before adjudicating the reference.

The parties may be provided ordinary copy of this order duly authenticated by Court Associate on payment of usual copying charges.

(R. M. LODHA, J.)

(J. P. DEVADHAR,J.)